

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

ROBERT JOHNSTON,)
individually and on behalf of a class of all)
other persons similarly situated,) Case No.1:14-cv-10427
Plaintiff,) Honorable Thomas L. Ludington
vs.)
DOW EMPLOYEES' PENSION PLAN) CLASS ACTION
And DOW CHEMICAL COMPANY)
RETIREMENT BOARD,)
Defendants.)

)

MOTION FOR LEAVE TO FILE EXHIBITS UNDER SEAL

Pursuant to Local Rule 5.3(b) and the Stipulated Protective Order (Dkt. # 15) , Defendants Dow Employees' Pension Plan (the "Plan") and Dow Chemical Company Retirement Board (the "Board") respectfully request leave to file under seal exhibits to their Brief in Opposition to Plaintiff's Motion for Class Certification, as well as the Identification Key. The exhibits and Identification Key contain sensitive personal information about prospective class members, including their names, employment identification numbers, Social Security Numbers, and home addresses. As such, Defendants seek to file under seal the

following exhibits to the Declaration of Shannon M. Callahan filed concurrently herewith:

- **Exhibit C:** This exhibit is the Expert Rebuttal Report of Ian H. Altman, FSA (“Altman Rebuttal”), submitted on behalf of Plaintiff Robert Johnston and dated July 29, 2015, as well as a supplement disclosure to the Altman Rebuttal. The Altman Rebuttal, designated confidential under the Protective Order, contains personal identifying information for prospective class members, such as their names and their Social Security Numbers. The parties do not dispute the confidentiality of this information. Accordingly, Defendants intend to file a public redacted version of the Altman Rebuttal, and they seek permission to file the unredacted version under seal.
- **Exhibit F:** This exhibit consists of twenty-four releases signed by prospective class members in connection with the termination of their employment at The Dow Chemical Company. The releases include personal identifying information for the proposed class members, *i.e.*, their names and employment identification numbers. Defendants produced these releases during discovery at DOW0026103-289 and designated them confidential under the terms of the Protective Order. The parties do not dispute the confidentiality of this information, and

Defendants seek to file a public redacted version of Exhibit F and an unredacted version of it under seal.

- **Exhibit H:** Exhibit H is a Dow Chemical Calculation Summary prepared by Towers Watson for Participant 55 in the proposed class. The calculation summary includes personal information about the prospective class member, including his name, employment identification number, and home address, as well as sensitive personal information about his ex-spouse, such as her birth date and relative identification number. Defendants produced the calculation summary during discovery at DOW0019166-DOW0019175 and designated the document confidential pursuant to the Protective Order. The parties do not dispute the confidentiality designation, and Defendants seek to file a public redacted version of Exhibit H and an unredacted version under seal.
- **Identification Key:** Defendants also request that the Identification Key attached to the Declaration of Shannon M. Callahan be filed under seal. The Identification Key includes the names of the proposed class members as they correlate to the anonymous participant numbers assigned in the key. The parties do not dispute the confidentiality of the proposed class members' names.

As noted above, these documents have either already been designated as confidential pursuant to the Protective Order or otherwise include a discussion of information contained in confidential documents. The Protective Order, entered by the Court on June 24, 2014, specifically contemplates that Defendants would be “producing confidential personal information of Pension Plan participants, including their social security numbers, birthdays, home addresses, and employment identification numbers,” and the documents would be “designated CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER.” Dkt. # 15 at 2-3. The Protective Order further provides that the parties may seek leave to file such confidential materials under seal. *Id.* at 6-8.

Courts have consistently recognized the importance of privacy and the need to protect certain information through protective orders and filings under seals. See *Dow Chem. Co. v. Reinhard*, No. 07-12012-BC, 2008 WL 1931910, at *4 (E.D. Mich. May 2, 2008) (citing cases acknowledging the propriety of protective orders preventing the disclosure of private information). In *Knoll v. American Telephone & Telegraph Co.*, 176 F.3d 359 (6th Cir. 1999), the Sixth Circuit explained the importance of protecting the privacy interests of nonparty employees and avoiding the “harm and embarrassment potentially caused by non-confidential disclosure” of “highly personal information such as an individual’s unlisted address and telephone number, marital status, [and] wage information.” *Id.* at 365.

Indeed, this Court has already recognized the appropriateness of filing under seal the opening Expert Report of Ian H. Altman, FSA and other documents prepared by Defendants during discovery, which contain prospective class members' names, employment histories, addresses, and information regarding their benefits under the Dow Plan. *See* Dkt. # 31 at 2. Filing the above documents under seal will further prevent the unnecessary disclosure of the prospective class members' personal and private financial information. *See Carter v. Welles-Bowen Realty, Inc.*, 628 F.3d 790, 791 (6th Cir. 2010) (granting motion to seal where the filing contained confidential financial information).

For the foregoing reasons, Defendants respectfully request permission to file under seal Exhibits C, F, and H, as well as the Identification Key to their Brief in Opposition to Plaintiff's Motion for Class Certification.

Dated: August 10, 2015

Respectfully submitted,

DOW EMPLOYEES' PENSION PLAN and
DOW CHEMICAL COMPANY
RETIREMENT BOARD

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing **Motion for Leave to File Exhibits Under Seal** was served via the Court's ECF system upon counsel of record this 10th day of August 2015.

Dated: August 10, 2015

By: /s Shannon M. Callahan

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